

- (1) Ms. Upton injured her back while working for Cessna Aircraft on August 10, 1998. She has not worked since August 18, 1998.
- (2) After initially seeing two other doctors, Ms. Upton saw Tulsa orthopedic surgeon Sami R. Framjee, M.D., on September 1 and 14, 1998. Based upon a lumbar myelogram and CT scan, he found that Ms. Upton had a large central disc herniation at the L3-4 intervertebral level.

(3) Ms. Upton next saw Tulsa neurosurgeon Frank S. Letcher, M.D., on September 17, 1998. According to Dr. Letcher, a lumbar myelogram performed on September 9, 1998, showed a central disc herniation at the L3-4 level and disc degeneration at L4-5 and L5-S1. He believed surgery would relieve her pain.

(4) Cessna Aircraft wanted another medical opinion and referred Ms. Upton to Wichita orthopedic surgeon Bernard T. Poole, M.D. He first saw Ms. Upton on October 29, 1998, and initially recommended that she undergo a reasonable trial of conservative treatment and epidural steroid injections before undergoing surgery. After being authorized to treat Ms. Upton, the doctor placed her in physical therapy and now recommends the steroid injections.

(5) Ms. Upton believes her symptoms have worsened since undergoing physical therapy and she is dissatisfied with Dr. Poole's treatment. Therefore, she requests the Division to appoint a different treating physician.

CONCLUSIONS OF LAW

This is a preliminary hearing to request a different authorized physician.

The Appeals Board has the authority to review those preliminary hearing orders that exceed the Administrative Law Judge's jurisdiction and authority.¹

The legislature expressly granted the Appeals Board the jurisdiction to review preliminary hearing orders for the following issues:²

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and claim?
4. Is there a defense that goes to the very basis and compensability of the claim?

¹ K.S.A. 1997 Supp. 44-551.

² K.S.A. 1997 Supp. 44-534a.

The Act provides that the Division may authorize the appointment of another health care provider when the services being provided are unsatisfactory.³ Therefore, the judges do not exceed their jurisdiction when they make that determination.

Because the issue of whether satisfactory medical services are being furnished is not one of the specific issues reviewable from a preliminary hearing order and because the Judge did not exceed his jurisdiction and authority in deciding that issue, at this time the Appeals Board does not have the authority to review the December 10, 1998 Order.

WHEREFORE, the Appeals Board dismisses claimant's appeal of the December 10, 1998 preliminary hearing Order; the Order remains in effect.

IT IS SO ORDERED.

Dated this ____ day of January 1999.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 44-510(c)(1).